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612; Dec. Dig. § 252.* 7 Va.-W. Va. Enc. Dig. 718; 14 Va.-W. Va. Enc. Dig. 563; 15 Va.-W. Va. Enc. Dig. 513.]

7. Trial (§ 251*)—Instructions—Applicability to Issues—Injuries to Passengers.—Where two counts of a declaration for injuries to a railway mail clerk charged the carrier with negligence in furnishing a defective car and in properly placing it in the train, so that the door slid shut upon the clerk, when the speed of the train was suddenly checked, but did not allege negligence in the checking of the train, instructions requested by the defendant, which based the plaintiff's right of recovery upon the defendant's negligence in the running of its train, were properly refused.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 587-595; Dec. Dig. § 251.* 7 Va.-W. Va. Enc. Dig. 723; 14 Va.-W. Va. Enc. Dig. 564; 15 Va.-W. Va. Enc. Dig. 515.]

8. Carriers (§ 218*)—Railroads (§ 278*)—Carriage of Passengers—Railway Mail Clerks—Contributory Negligence—Assumption of Risk.—A railway mail clerk in the discharge of his duties, while he is required to exercise ordinary care in using a defective door of the mail car, and cannot recover if he fails to do so, is, nevertheless, entitled to the same degree of care as a passenger, and does not assume the risk of the defect, even though he knew of it and did not report it.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 674-696, 927, 928, 933-949; Dec. Dig. § 218;* Railroads, Cent. Dig. §§ 891-900; Dec. Dig. § 278.* 2 Va.-W. Va. Enc. Dig. 707; 14 Va.-W. Va. Enc. Dig. 195; 15 Va.-W. Va. Enc. Dig. 162.]

Error to Circuit Court, Montgomery County.

Action by O. C. Bell against the Virginian Railway Company. Judgment for plaintiff, and defendant brings error. Reversed, and new trial awarded.

Hall & Woods, of Roanoke, *H. J. Phlegar*, of Christianburg, and *G. A. Wingfield*, of Norfolk, for plaintiff in error.

Hunt & Staples, of Roanoke, for defendant in error.

SOUTH ATLANTIC LIFE INS. CO. *v.* HURT'S ADM'X.

Sept. 11, 1913.

[79 S. E. 401.]

1. Insurance (§ 646*)—Life Policy—Defenses—Suicide—Burden of Proof.—In an action on a life policy, the burden is on the defendant to prove a defense of suicide by clear and satisfactory evidence

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

that the insured did actually commit suicide; a mere preponderance of the evidence being insufficient.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1555, 1645-1668; Dec. Dig. § 646.* 9 Va.-W. Va. Enc. Dig. 361; 14 Va.-W. Va. Enc. Dig. 657; 15 Va.-W. Va. Enc. Dig. 616.]

2. Insurance (§ 646*)—Life Policy—Accidental Death—Suicide—Presumptions.—Where the evidence in an action on a life policy as to whether insured's death was accidental or suicidal leaves the question in doubt, it will be presumed that it was accidental.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1555, 1645-1668; Dec. Dig. § 646.* 9 Va.-W. Va. Enc. Dig. 361; 14 Va.-W. Va. Enc. Dig. 657; 15 Va.-W. Va. Enc. Dig. 616.]

3. Insurance (§ 665*)—Life Policy—Suicide.—Where, in an action on a life policy, the evidence that insured committed suicide is circumstantial, the defense of suicide will fail unless the circumstances exclude with reasonable certainty any hypothesis of death by accident.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1555, 1707-1728; Dec. Dig. § 665.* 9 Va.-W. Va. Enc. Dig. 361; 14 Va.-W. Va. Enc. Dig. 657; 15 Va.-W. Va. Enc. Dig. 616.]

4. Evidence (§ 63*)—Presumption against Insanity.—All men are presumed to be sane until the contrary is shown, and the burden is on the party alleging insanity to prove it.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 83; Dec. Dig. § 63.* 7 Va.-W. Va. Enc. Dig. 680; 14 Va.-W. Va. Enc. Dig. 558; 15 Va.-W. Va. Enc. Dig. 507.]

5. Insurance (§ 665*)—Proof of Insanity—Insanity of Relatives.—In the absence of evidence of any demeanor, act, or word of insured at any time indicating that he was insane, the fact that he was shown to have had insane relatives did not prove that he was insane at the time of his death.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1555, 1707-1728; Dec. Dig. § 665.* 7 Va.-W. Va. Enc. Dig. 684.]

6. Insurance (§ 668*)—Life Insurance—Suicide—Question for Jury.—In an action on a life policy, evidence held to require submission to the jury of the question whether insured died as a result of accident or committed suicide.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1556, 1732-1770; Dec. Dig. § 668.* 14 Va.-W. Va. Enc. Dig. 657; 15 Va.-W. Va. Enc. Dig. 616.]

7. Appeal and Error (§ 1058*)—Review—Rulings on Evidence—Prejudice.—Where a physician was introduced as a witness by insurer and interrogated fully concerning what he knew of insured and

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what he meant by the language used in an affidavit in which he stated that he knew nothing of the special cause of insured's death "unless it be hereditary insanity," defendant was not prejudiced by the exclusion of the affidavit containing such answer.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4195, 4200-4204, 4206; Dec. Dig. § 1058.* 1 Va.-W. Va. Enc. Dig. 595; 14 Va.-W. Va. Enc. Dig. 94; 15 Va.-W. Va. Enc. Dig. 69.]

8. Insurance (§ 293*)—Life Policy—Fraud—Answers Willfully False.—Where a life policy provided for two defenses only, to wit, suicide within 12 months from the date of the policy and fraud, fraud was not made out by untrue answers in the application failing to disclose that insured's uncle had been afflicted with hereditary insanity, where it was not shown that insured had knowledge that such insanity was hereditary and that the answers were willfully false.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 693; Dec. Dig. § 293.* 9 Va.-W. Va. Enc. Dig. 354; 14 Va.-W. Va. Enc. Dig. 655; 15 Va.-W. Va. Enc. Dig. 614.]

9. Insurance (§ 293*)—Life Policy—Application—Family History—Questions—Instruction—"Hereditary Disease."—An application for life insurance, after containing numerous questions as to the applicant's physical and mental condition, inquired whether any intimate associate or any person in the applicant's immediate household was then ill with consumption, whether any one of them had recently been ill or died of that disease, and then asked whether any of the applicant's uncles or aunts had consumption or any "hereditary" disease. Held, that the last question should be construed as inquiring concerning physical ailments and condition and not to refer to hereditary insanity.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 693; Dec. Dig. § 293.* 9 Va.-W. Va. Enc. Dig. 351.]

10. Insurance (§ 375*)—Life Policy—Application—Medical Examiner—Knowledge—Imputation to Insurer.—Where insurer's medical examiner, who took insured's application for the policy sued on, was well acquainted with the mental condition of insured's family, his uncles and aunts, and had been so from early boyhood, the insurer was bound by the physician's knowledge concerning such condition, under the rule that the examining physician for an insurance company is the agent of the insurer notwithstanding a provision of the contract to the contrary.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 968-997; Dec. Dig. § 378.* 9 Va.-W. Va. Enc. Dig. 355.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Error to Circuit Court, Tazewell County.

Action by Ollie L. Hurt, as administratrix of John B. Hurt, deceased, against the South Atlantic Life Insurance Company. Judgment for plaintiff, and defendant brings error. Affirmed.

Henry & Graham, of Tazewell, and *Thos. B. Gay*, of Richmond, for plaintiff in error.

Greever & Gillespie and *Chapman & Gillespie*, all of Tazewell, for defendant in error.

DICKENSON et al. v. RAMSEY et al.

Nov. 20, 1913.

[79 S. E. 1025.]

1. Alteration of Instruments (§ 29*)—Evidence—Weight and Sufficiency.—In a suit wherein complainants charged that a deed conveying land to their mother for life with remainder to themselves was despoiled, mutilated, and changed after its execution and before its recording by striking out the grant of the remainder, clear, cogent, and convincing evidence in support of such allegations was required.

[Ed. Note.—For other cases, see Alteration of Instruments, Cent. Dig. §§ 259-263; Dec. Dig. § 29.* 1 Va.-W. Va. Enc. Dig. 314; 14 Va.-W. Va. Enc. Dig. 41; 15 Va.-W. Va. Enc. Dig. 39.]

2. Fraud (§ 41)—Evidence—Sufficiency.—Fraud must be clearly alleged and proved, as every presumption is in favor of innocence and not of guilt.

[Ed. Note.—For other cases, see Fraud, Cent. Dig. §§ 36, 37; Dec. Dig. § 41.* 6 Va.-W. Va. Enc. Dig. 496; 14 Va.-W. Va. Enc. Dig. 476.]

3. Alteration of Instruments (§ 22*)—Remedies.—Where a deed granting land to a person for life, with remainder to her children, was altered after its execution and before its recording by striking out the grant of the remainder, a court of equity could grant relief to the remaindermen.

[Ed. Note.—For other cases, see Alteration of Instruments, Dec. Dig. § 22.* 1 Va.-W. Va. Enc. Dig. 307; 14 Va.-W. Va. Enc. Dig. 41; 15 Va.-W. Va. Enc. Dig. 39.]

4. Alteration of Instruments (§ 29*)—Evidence—Weight and Sufficiency.—In a suit wherein complainants claimed that a deed conveying land to their mother for life with remainder to themselves was altered after its execution and before its recording by striking out the grant of the remainder, evidence held insufficient to show

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.